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NO. 82-529

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

DONNA M. MURILLO, *et al.*,
Petitioners,

v.

W. LEWIS BAMBRICK, Clerk of the Superior Court of New Jersey,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OPPOSING PETITION FOR CERTIORARI ON BEHALF OF RESPONDENT W. LEWIS BAMBRICK, CLERK OF THE SUPERIOR COURT OF NEW JERSEY

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Counterstatement of the Case

The petitoner would have this Court review through *certiorari* a decision of the United States Court of Appeals for the Third Circuit holding simply that the State of New Jersey was authorized to require matrimonial plaintiffs, except those entitled to a waiver because of indigency, to pay an additional filing fee intended to recoup some of the costs associated with the resulting reasonably-conceived

burden upon New Jersey judicial resources. In seeking such further and extraordinary review the petitioner fails to understand that the Court of Appeals decision, *Murillo* v. *Bambrick*, 681 F. 2d 898 (3d Cir. 1932), rev'g *Murillo* v. *Bambrick*, 508 F. Supp. 830 (D.N.J. 1981), was grounded upon long-established principles articulated by this Court and by other courts not only that, in general, a legislative classification will be sustained if there be any reasonably-conceived facts to justify it, but that, in particular, the State may impose fees in order to generate revenues which need not be closely correlated to anticipated expenses but which will offer support for its court system. The Court of Appeals recognized that no basis existed for finding that the New Jersey Legislature had exceeded its law-making prerogative, especially because the subject matter of the litigation calls only for the minimum rationality standard of judicial review, and that conclusion is plainly correct. The petitioner has shown nothing to warrant consideration by this Court.

The filing fee statute, now repealed, was enacted in 1948, L. 1948, c. 323, with its first section providing:

> Except in actions in forma pauperis, before any matrimonial action is approved for trial the plaintiff or counterclaimant shall pay to the clerk of the superior court, for the use of the state, the sum of $50 and in litigated actions the additional sum of $10. [N.J.S.A. 2A:34-16]

The second section of the statute provided:

> On or before the 10th day of each month the clerk shall pay to the state treasurer all such fees which were received by him or his assistants during the preceding month and shall render a full and itemized statement or account of all such fees which may have

> been charged or which may be accrued or become payable during the month preceding the making of such statement. [N.J.S.A. 2A:34-17]

By virtue of its rule-making authority under the State constitution, N.J. Const. (1947), Art. VI, §2, ¶3, the Supreme Court of New Jersey adopted one rule which implemented the statutory requirements and another which waived them for indigents. R. 4:79-2 provided:

> Except as otherwise provided by R. 1:13-2, before any matrimonial action is approved for trial the plaintiff or counterclaimant shall deposit with the clerk the sum of $50 and in litigated actions the additional sum of $10 for stenographic fee. The aforesaid fees together with the request for approval for trial of the matrimonial action shall be forwarded to the clerk within 30 days of entry of default or the service of a pleading contesting the action.

The second rule, R. 1:13-2(a), afforded for all kinds of litigation the waiver of filing fees upon the verified application of any person alleging poverty.

The verified complaint was filed August 7, 1979 and invoked federal jurisdiction under the Fourteenth Amendment to the United States Constitution and under 42 U.S.C.A. §1983, 28 U.S.C.A. §1331(a) and 28 U.S.C.A. §1343(3)(4). It alleged that the plaintiff Donna M. Murillo, as a resident of New Jersey for more than two years, had a cause of action for divorce under New Jersey law and had in fact commenced a divorce suit against her husband in the Superior Court of New Jersey, Chancery Division—Bergen County. Nevertheless, though her spouse had failed to answer her complaint and though she now wanted her case listed for trial as an uncontested matrimonial matter,

the case would not be so scheduled unless she paid the additional statutorily-required $50 fee. Demanding a judicial declaration that the statute and court rule were invalid, the plaintiff demanded also that her complaint be certified as a class action, with the class comprised of all other matrimonial litigants similarly situated, and that the defendant W. Lewis Bambrick, Clerk of the Superior Court of New Jersey, be ordered to establish a separate interest-bearing trust account into which all matrimonal fees would be deposited during the pendency of the federal litigation. As requested by the complaint, in the event that the plaintiff ultimately prevailed the fees would be refunded to the members of the class, and the defendant would pay a reasonable counsel fee and costs of suit.

Some time after the matter was commenced the New Jersey Legislature repealed the 1948 statute, L. 1980, c. 80, and thereafter the accompanying court rule was deleted. Nevertheless, the case had already been certified as a class action, with the statutory fees having been paid by matrimonial litigants and deposited into an escrow account, and therefore the District Court proceeded to a decision on the merits, trial being held on September 9 and 10, 1980 before the Honorable Herbert J. Stern. Testimony was offered by but a single witness, Kent A. Losche, an attorney who offered background information with respect to matrimonial practice generally and with respect to his own suppositions concerning the history of the matrimonial fee legislation. After stating that advisory masters had been used in divorce cases in New Jersey during the nineteenth and early twentieth centuries and had been paid for their services, the witness said that after the constitutional revision of the New Jersey judicial system in 1948 masters had no longer been used and that after the enactment of the New Jersey Divorce Reform Law of 1971 few divorce cases were contested and most consumed little judicial time.

He opined that no reason existed to justify payment of the fee.* Upon considering the record the District Court on February 20, 1981 held the matrimonial fee statute and court rule unconstitutional as denying equal protection, the District Judge saying he could find no empirical justification underlying the fee statute (Pa61 to Pa66). *Murillo* v. *Bambrick, supra,* 508 F. Supp. at 835-837.

The Court of Appeals reversed. After holding that the litigation did not implicate any fundamental right calling for strict judicial scrutiny (Pa6 to Pa13), *Murillo* v. *Bambrick, supra,* 681 F. 2d at 902-905, the two-judge majority concluded that the New Jersey Legislature had not proceeded irrationally both in instituting the divorce fee arrangement in 1948 and in retaining that arrangement over a number of decades because "it would not have been unreasonable for the Legislature to have been of the opinion that the State's divorce system imposed financial as well as non-financial demands upon the judiciary, thereby justifying additional monetary support from the users of that system" (Pa15, Pa16). *Id.* at 906. Observing that the plaintiff and the District Court apparently concurred that the fee was valid at least until 1971 (Pa17), *id.* at 907, the Court of Appeals found that the Legislature had not acted irrationally when it continued the fee after enacting the Divorce Reform Law

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* During trial four exhibits were introduced. The plaintiff introduced a statistical supplement to the Annual Report of the New Jersey Administrative Office of the Courts, a report of the Committee on Matrimonial Litigation of the Supreme Court of New Jersey recommending abolition of the matrimonial fees, a copy of the legislative bill which, when enacted, repealed the fee statute, and an order of the Supreme Court deleting the implementing court rule (T2-13 to T4-12). The State introduced an exhibit which summarized the State costs for processing matrimonial cases (T75-4 to 18, T107-4).

that year. As the Court said, "The Legislature reasonably could have believed that, even with the adoption of a more 'liberal' system of divorce, divorce-related litigation would continue to impose a financial burden upon the state's judicial machinery—a burden that could be offset, in part, through the collection of a user's fee" (Pa19). *Id.* at 908.

The plaintiff's petition for *certiorari* followed the Court of Appeals reversal. This brief opposes that petition.

ARGUMENT

The United States Court of Appeals properly held that the New Jersey statute requiring matrimonial plaintiffs to pay an additional filing fee was a legitimate means of offsetting a reasonably-conceived drain upon judicial resources caused by divorce litigation, and, especially with the statute having been repealed and no issue of nationwide significance having been presented, this Court should deny the petition for certiorari.

Despite the petitioner's best efforts to cast this case as a supposed "perfect vehicle" for a risk-filled constitutional excursion into the legislative domain over the termination of marriage (Pb14), the litigation self-evidently does not even touch upon the multitude of unique considerations which a state legislature must carefully weigh before determining how and under what circumstances the matrimonial bond may be severed. Rather, as the Court of Appeals recognized, the central legal question concerned the power of the State of New Jersey to derive financial support for its judiciary by means of a filing fee intended to ease the reasonably-conceived judicial burden of adjudicating matrimonial cases. The

Court of Appeals rightly concluded that the State was so authorized, and that holding, based as it is upon controlling precedents from this Court, has satisfactorily resolved the matter. Especially considering that the filing fee statute through its implementing court rule permitted the indigent to seek divorce without paying the fee, that the statute has now been repealed and that no question of nation-wide significance has been presented, this Court need not and should not prolong the case further.

The conclusion of the Court of Appeals that the New Jersey matrimonial fee statute was a reasonably-grounded and entirely legitimate attempt by the Legislature to deal with "a burden that could be offset, in part, through the collection of a user's fee," *Murillo* v. *Bambrick*, 681 F. 2d 898, 908 (3d Cir. 1982), is firmly based upon long-standing principles articulated by this Court concerning how an allegation of an equal protection denial is to be evaluated. In *McGowan* v. *Maryland*, 366 U.S. 420, 425-426, 81 S. Ct. 1101, 6 L.Ed. 2d 393 (1961), this Court held that "the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others" and that:

> [t]he constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

Perfection in classification "is by no means required," for a statute is not constitutionally offensive merely because

the classification "is not made with mathematical nicety. . . ." *Vance* v. *Bradley*, 440 U.S. 93, 108, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979), quoting *Phillips Chemical Co.* v. *Dumas School District*, 361 U.S. 376, 385, 80 S. Ct. 474, 4 L. Ed. 2d 384 (1960), and *Dandridge* v. *Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970).*

In applying these principles the Court of Appeals recognized that both this Court and the New Jersey courts have repeatedly affirmed the expansive power which the State possesses over marriage. As this Court has said:

> Each state as a sovereign has a rightful and legitimate concern in the marital status of persons domiciled within its borders. The marriage relation

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* The petitioner to the contrary notwithstanding (Pb22 to Pb31), this Court has by no means departed from these principles. As stated in the text:

> those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker. [*Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 463-464, 101 S.Ct. 715, 66 L.Ed. 2d 659 (1981)].

Furthermore, the court is not to try to identify some "primary" legislative motive, for such inquiries are "a hazardous matter," and "the search for the 'actual' or 'primary' purpose of a statute is likely to be elusive." *Michael M.* v. *Superior Court of Sonoma County*, 450 U.S. 464, 469-470, 101 S.Ct. 1200, 67 L.Ed. 2d 437 (1981). Even if the original purpose of a statute might no longer be constitutionally acceptable, its validity will nonetheless be affirmed if another legitimate purpose may be hypothesized, 450 U.S. at 472, n. 7, and an asserted reason underlying a classification may not be rejected unless "it could not have been a goal of the legislation." *Id.* at 470, quoting *Weinberger* v. *Wiesenfeld*, 420 U.S. 636, 648, n. 16, 95 S.Ct. 1225, 43 L.Ed. 2d 514 (1975).

> creates problems of large social importance. Protection of offspring, property interests, and the enforcement of marital responsibilities are but a few of commanding problems in the field of domestic relations with which the state must deal. [*Williams* v. *North Carolina*, 317 U.S. 287, 298, 63 S.Ct. 207, 87 L.Ed. 279 (1942)]

Divorce is of concern not merely to the immediate parties, for "[i]t affects personal rights of the deepest significance. It also touches basic interests of society." *Williams* v. *North Carolina*, 325 U.S. 226, 230, 65 S.Ct. 1092, 89 L.Ed. 1577 (1945). *Sosna* v. *Iowa*, 419 U.S. 393, 407-409, 95 S.Ct. 553, 42 L.Ed. 2d 532 (1975).

In New Jersey, both before and after enactment of the Divorce Reform Law of 1971, the State has always been "in fact if not in name a third party having a substantial interest," and therefore special responsibilities are imposed upon the court and upon attorneys as officers of the court. *In re Backes*, 16 N.J. 430, 433-434 (1954); *Grunauer* v. *Grunauer*, 80 N.J. Super. 531, 535-536 (App. Div. 1963). Since "[t]he public is represented by the conscience of the court," *In re Backes*, 16 N.J. at 434, "the utmost care should be taken in order to determine the *bona fides* of the action." *Welch* v. *Welch*, 35 N.J. Super. 255, 255 (App. Div. 1955). None of these propositions has been changed by the 1971 divorce law amendment. Marriage remains "a social relationship subject in all respects to the state's police power," *Rothman* v. *Rothman*, 65 N.J. 219, 228 (1974), and a court may terminate a marriage only upon ascertaining that the statutory criteria have been satisfied. *Babushik* v. *Babushik*, 157 N.J. Super. 128, 130 (Ch. Div. 1978); *Ellam* v. *Ellam*, 132 N.J. Super. 358, 362-363 (Ch. Div. 1975). For this reason even today, a decade after the divorce law was amended, a divorce case in New Jersey, unlike other kinds

of civil cases, may not be decided solely upon affidavits. *Manion* v. *Manion*, 143 N.J. Super. 499, 502-503 (Ch. Div. 1976).

It is not surprising, then, that over the years the New Jersey Legislature should have enacted provisions designed to deal not only with the substance of marital dissolution, but also with the impact which such matters would have upon the judicial system and the consequent need to establish a ready source of revenue. The desire of the State to generate revenues to support its court system is a rational basis for a filing fee requirement, *Ortwein* v. *Schwab*, 410 U.S. 656, 660, 93 S.Ct. 1172, 35 L.Ed. 2d 572 (1973); *Bernstein* v. *New York*, 466 F. Supp. 435, 438-439 (S.D.N.Y. 1979), for one of the legitimate purposes of a filing fee is "to make the [judicial] system self-sustaining and paid for by those who use it rather than by tax revenue drawn from the public at large." *United States* v. *Kras*, 434 U.S. 434, 448, 93 S.Ct. 631, 34 L.Ed. 2d 626 (1973). The fact that the fees are deposited into the general fund of the Treasury instead of being earmarked for the support of the courts specifically does not derogate from this rational basis, moreover, since the financial support for the courts comes from that same general fund. *Manes* v. *Goldin*, 400 F. Supp. 23, 30-31 (E.D.N.Y. 1975).

Upon general principles "[t]he State is not compelled to verify logical assumptions with statistical evidence," *Hughes* v. *Alexandria Scrap Corp.*, 426 U.S. 794, 812, 96 S.Ct. 2488, 49 L.Ed. 2d 220 (1976), and the State certainly need not demonstrate a careful correlation between income and expenses in order to justify a judicial filing fee. As one court has said:

> In matters affecting budgetary policy and the extent to which the cost of providing particular governmental services should be borne by the users of those

> services, the Legislature is in a far better position than a reviewing court to weigh the variable factors which may have a bearing on the fiscal problem. [*Joslin* v. *Regan*, 406 N.Y.S. 2d 938, 942 (App. Div. 1978)]

No doubt can exist, then, that at the time of enacting the matrimonial fee schedule in 1948 the New Jersey Legislature possessed the broadest of discretion to deal effectively with the perceived special characteristics of divorce litigation, and it could well have conceived that matrimonial cases by their nature would produce a drain upon judicial resources justifying additional fees to be paid by matrimonial plaintiffs. Furthermore, as the Court of Appeals held, "The Legislature reasonably could have believed that, even with the adoption of a more 'liberal' system of divorce [in 1971], divorce-related litigation would continue to impose a financial burden upon the State's judicial machinery —a burden that could be offset, in part, through the collection of a user's fee." *Murillo* v. *Bambrick*, 681 F. 2d at 908.*

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* Plainly the Legislature might reasonably have contemplated this burden upon the judiciary simply from the fact that under the 1971 revision grounds for divorce were broadened, meaning that a larger number of divorce actions would likely be filed. It is worth noting, furthermore, that the 1971 divorce law "liberalization" prompted more than one commentator to envision significant interpretive difficulties. For example, with respect to the revised extreme cruelty ground, a New Jersey Law Journal commentator inquired whether an objective test or a subjective test was to be applied. Skoloff, "The Divorce Reform Law—A Brief Review," 94 N.J.L.J. 701, 701 (1971). With respect to the new 18-month separation ground, a Rutgers Law Review writer noted that the law did not indicate what evidence would be required to overcome the presumption against a reasonable prospect of re-

(Footnote continued on following page)

The petitioner would avoid this obviously lawful justification for the filing fee by urging at this late date —she did not so argue in either the District Court or the Court of Appeals, with the hypothesis having been raised only by the Court of Appeals dissenting judge—that the fundamental right/compelling state interest analysis be imposed upon the divorce statutes of all jurisdictions. Yet an array of legal principles as well as practical considerations dictates that divorce not be so considered. Perhaps paramount are the facts not only that the fee statute has been repealed, L. 1980, c. 80, but that by virtue of implementing court rules waiving the fee for the indigent, R. 4:79-2; R. 1:13-2, the statute did not restrict access to the judicial forum. *Cf. Boddie* v. *Con-*

(Footnote continued from preceding page)

conciliation once the 18 months have expired. "The 1971 New Jersey Divorce Law," 25 *Rutg. L. Rev.* 476, 480 (1971). The new statutory provisions dealing with post-divorce matters were of special concern, with one commentator finding that the alimony section "raises more controversy and more questions than any other provision of the Divorce Reform Law and it will require a considerable amount of case law before the provisions will be clear." 94 N.J.L.J. at 708.

The New Jersey courts eventually had to resolve many of these issues. Regarding the 18-month separation ground, the Chancery Division in *Morrison* v. *Morrison*, 122 N.J.Super. 277, 283 (Ch. Div. 1972), and *Brittner* v. *Brittner*, 124 N.J.Super. 259, 262 (Ch. Div. 1973), detailed how the judiciary was to balance the presumption against reconciliation generated by 18 months of separation against the public policy of not dissolving a marriage still having some vitality. As predicted by the New Jersey Law Journal commentator, moreover, in the third year after enactment of the Divorce Reform Law the Supreme Court of New Jersey was obligated to set forth guidelines concerning equitable distribution of assets. *Painter* v. *Painter*, 65 N.J. 196, 208-211 (1974). The predicted interpretive difficulties were thus no mere mirage.

necticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed. 2d 113 (1971). From the broader perspective, moreover, in the past this Court has wisely refrained from using the fundamental right concept so as to become too deeply involved in matters which are clearly within the legislative province, *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 33-44, 93 S.Ct. 1278, 36 L.Ed. 2d 16 (1973), and it should refrain from becoming involved here as well. "We are not authorized nor are we qualified to formulate a national code of domestic relations." *Williams* v. *North Carolina, supra*, 317 U.S. at 304 (Frankfurter, J., concurring).

Beyond question the authority over divorce resides in the states rather than in the federal government "as it is certain that the Constitution of the United States confers no power whatever upon the government of the United States to regulate marriage in the states, or its dissolution. . . ." *Andrews* v. *Andrews*, 188 U.S. 14, 32, 23 S.Ct. 237, 47 L.Ed. 366 (1903). *Barber* v. *Barber*, 62 U.S. 582, 584, 16 L.Ed. 226 (1859). Instead, with divorce in England having originally been granted solely by the ecclesiastical courts and by a few special acts of Parliament and with there having been no common law in that regard, the American states assumed the power to terminate marriage by statutory authorization only. *E.g. Heath* v. *Heath*, 85 N.H. 419, 159 A. 418, 424 (Sup. Ct. 1932); *Worthington* v. *District Court*, 37 Nev. 212, 142 P. 230, 237 (Sup. Ct. 1914). *See also Maynard* v. *Hill*, 125 U.S. 190, 206-207, 8 S.Ct. 723, 31 L.Ed. 654 (1888). Consequently, "[a] divorce cannot be had except in that court which the state authorizes, and for those causes only, and with those formalities, which it has by statute prescribed." *Dennis* v. *Dennis*, 68 Conn. 186, 36 A. 34, 37 (Sup.Ct.Err. 1896).

In view of this historical background the states have uniformly exercised their power in plenary fashion. New Jersey, for example, has seen fit to control the commencement of the marriage relationship by imposing limitations upon consanguinity, N.J.S.A. 37:1-1, the age of consent, N.J.S.A. 37:1-6, and disease, among other considerations. N.J.S.A. 37:1-9, 23, 27. The New Jersey Legislature has determined as well that marriage may be terminated only upon certain specified grounds, which include among others not only adultery, N.J.S.A. 2A:34-2(a), but desertion which must be wilfull and continued for 12 or more months, N.J.S.A. 2A:34-2(b), separation for 18 or more consecutive months with no reasonable prospect of reconciliation, N.J.S.A. 2A:34-2(d), voluntarily induced narcotic addiction or habitual drunkenness for 12 or more consecutive months after marriage, N.J.S.A. 2A:34-2(e), institutionalization for mental illness for 24 or more consecutive months after marriage, N.J.S.A. 2A:34-2(f), and imprisonment for 18 or more consecutive months after marriage. N.J.S.A. 2A:34-2(g). As this Court explained long ago, marriage "is more than a contract," for "[i]t partakes more of the character of an institution regulated and controlled by public authority, upon principles of public policy, for the benefit of the community." *Maynard* v. *Hill, supra,* 125 U.S. at 213. The states, New Jersey in particular, have dealt with marriage upon this understanding.

With the legislature of each state possessing this breadth of discretion to determine the conditions under which divorce may be allowed, this Court must proceed, at the very least, with the utmost caution before characterizing divorce as a "fundamental right." The situation is comparable to that in *San Antonio School District* v. *Rodriguez, supra,* in which this Court was urged to characterize the right to a public school education as funda-

mental, thereby engendering the most closely focused of judicial scrutiny of every state legislative measure dealing with that subject. In refusing to accept that invitation this Court noted that:

> we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause. [411 U.S. at 41]

Acknowledged was the fact that "the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues." *Ibid.*

The identical considerations pertain here. A characterization by this Court of divorce being a "fundamental right" would constitute a directive to courts across the nation, state as well as federal, to question inquisitively whether each of the many state legislative provisions limiting divorce substantively and procedurally is undergirded by some "compelling state interest" and then to invalidate the provision if the legislative view does not coincide with that of the reviewing court. The states have always assumed that they need not favor divorce and may permit it only "when those conditions are found to exist, in respect to one or the other of the married parties, which seem to the

legislature to make it probable that the interests of society will be better served, and that parties will be happier, and so the better citizens, separate, than if compelled to remain together." *Dennis* v. *Dennis, supra,* 36 A. at 37. Yet, from the New Jersey standpoint alone what proof could be adduced, other than the perceptions and general understanding of the legislators, that divorce is "compellingly" warranted only when desertion exceeds 12 months rather than some shorter period, N.J.S.A. 2A:34-2(b), or when separation exceeds 18 months—again in contrast to some other time period—and is combined with no reasonable prospect of reconciliation? N.J.S.A. 2A:34-2(d). How might a reviewing court deal with the distinction between voluntarily induced narcotic addiction or habitual drunkenness, which need occur for only 12 consecutive months after marriage in order to justify divorce, N.J.S.A. 2A:34-2(e), and imprisonment, which must have occurred for 18 months after marriage, N.J.S.A. 2A:34-2(g), or mental illness institutionalization, which must have occurred for 24 months? N.J.S.A. 2A:34-2(f). The distinctions are by no means irrational; they are simply the kinds of policy judgments which are to be made by the Legislature, not by the courts.

In short, the courts are simply not equipped to adjudicate the public policy imponderables which comprise the legislative judgment concerning divorce. Even were this Court desirous of plunging into this legislative policy tangle, it would most assuredly wish to do so only within the context of litigation whose background elucidates the nature of the issues and the extent to which a court might safely become involved. Under these criteria the present case is manifestly not at all suitable, for it does not even concern divorce as such, but concerns, instead, nothing more than a judicial filing fee. Not so incidentally, moreover, the statute which imposed that fee has been repealed, meaning that even that issue has lost whatever significance

it might have had for the future. These pragmatic considerations must not obscure the fundamental point, however. As the Court of Appeals held, the only legal question was whether the State of New Jeresy might call for a filing fee in matrimonal cases to help alleviate a reasonably-perceived drain upon the judicial system, and that question was properly answered in the affirmative. With there being no legal issue of import for New Jersey or for the nation, this Court should deny the petition for *certiorari*.

CONCLUSION

It is respectfully submitted that for these reasons the petition for *certiorari* should be denied.

Date:

Respectfully submitted,

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